

CHECKLIST ITEM P
ZONING ORDINANCE MODIFICATIONS

June 22, 2009

Revised November 6, 2009

I. MODIFICATION OF REQUIRED BUFFER ADJACENT TO RESIDENTIAL DEVELOPMENT

A. ZONING ORDINANCE SECTIONS TO BE MODIFIED

Section 3-509(C) R-8 Single Family Residential District/Additional Development Standards.

Minimum Buffer. A permanent common open space buffer of fifty (50) feet in depth with a Category 2 Buffer Yard (Section 5-1414(B)) shall be provided where a development adjoins an existing or planned residential district, land bay or development which has a minimum allowable lot size of 6,000 square feet or greater. Such buffer area may be included in open space calculations.

Section 4-109(C) Site Planning – External Relationships

Uses adjacent to single-family, agricultural, or residential districts or land bays allowing residential uses. Where residential uses in a PD-H district adjoin a single-family residential, agricultural, or residential district or land bay allowing residential uses, or a commercially zoned development approved subject to proffers prior to adoption of this ordinance, the development shall provide for either:

- (1) Single family dwellings on minimum lots of (20,000) square feet or greater, exclusive of major floodplain, along such perimeter; or,
- (2) A permanent open space buffer along such perimeter at least fifty (50) feet in width, landscaped with a Type 2 Buffer Yard.

Section 4-110(I) Site Planning – Internal Relationships

Uses adjacent to single-family residential, or agricultural and residential districts or land bays allowing residential uses. Where residential uses in a PD-H district adjoin a single-family residential, agricultural, residential district or land bay allowing residential uses, the development shall provide for either:

- (3) Single family dwellings on minimum lots of (20,000) square feet or greater, exclusive of major floodplain, along such perimeter, or:
- (4) A permanent open space buffer along such perimeter at least fifty (50) feet in width, landscaped with a Type 2 Buffer Yard.

B. PROPOSED MODIFICATION

Along the boundary that adjoins the Goose Creek Preserve property to the northeast, the applicant proposes to provide:

- A minimum 25-foot permanent open space buffer along lot 37, a lot containing a minimum of 10,000 square feet;
- A minimum 30-foot permanent open space buffer along lots 48-51, lots containing a minimum of 9,000 square feet;
- A 25-foot rear yard along lots 38 and 39, lots containing a minimum of 7,500 square feet;

C. JUSTIFICATION FOR MODIFICATION

The public purpose of the 50-foot buffer requirement is to provide a visual separation between two zoning districts or residential land bays with potentially dissimilar lot sizes and to provide protection of the development from potentially adverse surrounding influences and protection of surrounding areas from potentially adverse influences within the development. In this case, however, the Goose Creek Preserve property is zoned PD-H4, a higher density than Belmont Glen Village, with both residential communities to be administered under the R-8 district requirements. Belmont Glen Village proposes a minimum single-family detached lot size of 6,000 square feet, while the Goose Creek Preserve property is administered under the R-8 district requirements for projects providing affordable dwelling units, with no minimum lot size requirement. Both projects are proposing single-family detached units in the land bays located along the common property boundary. Therefore, similar uses are proposed adjacent to each other, and do not require “protection” from each other. In addition, the Goose Creek Preserve property is providing an open space buffer area along the common boundary with Belmont Glen Village. Along lot 50, where Belmont Glen Village is providing a minimum 30-foot open space buffer, the Goose Creek Preserve property is providing an open space buffer ranging from a minimum of 35 feet to 100 feet for a total combined buffer ranging from 70 feet to 135 feet. Along lots 37 and 38, where there is no open space buffer, the Goose Creek Estates property is providing a minimum 85-foot open space buffer. This open space buffer area is wooded with mature stands of trees. With this naturally wooded area providing ample visual separation between the two neighborhoods, there is no need to provide the full 50-foot open space buffer along every lot on the Belmont Glen Village boundary.

Belmont Glen Village has been laid out with great sensitivity to the natural features/green infrastructure located on the property. In order to respect these features, the built portion of Belmont Glen is located in close proximity to the Goose Creek Preserve property in order to maximize the open space buffer along Goose Creek. The need for this modification request isn't a case of trying to maximize density on the property, since an overall density of 1.37 dwelling units per acre is proposed. Nor is it a request to reduce open space, since 67% of the site will be retained as open space. Rather, the need for this modification request is clearly demonstrated by trying to achieve the best conservation design for the site possible. Since similar zoning and uses are proposed adjacent to each other, and since the Goose Creek Preserve property is proposing an ample wooded buffer on its side, the public purposes of these zoning ordinance sections will be satisfied.

II. **MODIFICATION OF ADU REQUIREMENTS TO PERMIT CASH IN LIEU OF UNITS**

A. ZONING ORDINANCE SECTION TO BE MODIFIED

Section 7-103(A)(1) Single Family Detached and Single Family Attached Units.

For active rezoning applications that have not yet complied with Section 6-1204(D)(1) of this Ordinance as of December 16, 2003, and for rezoning, special exception, site plan and preliminary subdivision applications officially accepted after December 16, 2003 which request approval of single family detached dwelling units or single family attached dwelling units, the proposed density shall reflect an increase of twenty percent (20%), including the required number of affordable dwelling units, unless such figure is modified pursuant to the provisions of Section 7-108 or the applicant provides cash in lieu of providing the single family detached units pursuant to Section 7-108(A)(3).

B. PROPOSED MODIFICATION

The applicant proposes to permit the cash in lieu buyout of required Affordable Dwelling Units (ADUs), pursuant to Section 7-108(A)(3), which states as follows:

...any request for rezoning, special exception, or preliminary subdivision (by right) which contain only single family detached units, a modification may be requested to provide cash in lieu of the units. Such cash must be paid prior to the first zoning permit. In the event that an applicant requests a modification to make such cash payment, the following criteria shall apply:

- (a) The cash formula of Section 7-108(E) shall apply.*
- (b) The decision to pay cash in lieu of providing the units has been made at the time of approval of the rezoning, special exception or preliminary subdivision (by right), as applicable.*
- (c) No bonus density is to be granted for a development, when the applicant opts to provide cash in lieu of units.*
- (d) The district regulations of Article VII shall not apply to a development when an applicant opts to provide cash in lieu of units.*

C. JUSTIFICATION FOR MODIFICATION

The proposed application is an amendment to ZMAP 2002-0007 and adopted as ZMAP 2004-0006 as part of a court settlement of the original rezoning application. The following is the justification for this modification provided with ZMAP 2002-0007 and with ZMAP 2004-0006, since the Zoning Ordinance requirements governing ADU modifications were amended during that time period. The proposed application is seeking to retain the proffers and applicable modifications that were adopted under ZMAP 2004-0006, and this modification is identical to the modification approved under ZMAP 2004-0006. ZMAP 2002-0007 fully complied with all Zoning Ordinance provisions, including Article 7 governing affordable dwelling unit developments and included a cash buy-out of the affordable dwelling units for 6.25% of the total units payable to the County prior to issuance of the first zoning permit on the property. ZMAP 2004-0006 was adopted with the same modification. The Modification Subcommittee of the Affordable Dwelling Unit Advisory Board (ADUAB) as well as the full ADUAB recommended approval at the time of the rezoning, as did staff.

In response to the terms of Section 7-108(A)(3), the cash buy-out included in the proffers meets the cash formula of Section 7-108(E) in effect on December 1, 2003. The original modification was granted as part of a rezoning application constituting all single-family detached dwelling units, which continues to apply to the proposed amendment. No density bonus is included, with a density of 1.37 dwelling units per acre in a PD-H3 (three dwelling units per acre) district. The Article VII district regulations have not been used for the property layout, with the standard R-8 lot requirements being applied.

The following is the applicant's consideration given to criteria contained in Section 7-108(B):

- (1) The number of affordable units, low-cost housing, manufactured housing and other similar type housing that exists, or are to be provided, within two (2) miles of the site and within Loudoun County.*

Response: Belmont Glen Village is located in the Route 659 corridor in the vicinity of the major planned communities of Belmont Greene, Ashburn Farm, Broadlands and Brambleton plus additional projects including the Corro Property, Goose Creek Preserve, Goose Creek Village and Goose Creek Village South. Each of these communities is providing affordable housing according to Article 7.

- (2) *Public facilities and services already developed for the overall development capacity to accommodate the maximum density increase permitted for provision of affordable dwelling units.*

Response: The availability of public facilities and services has no bearing on providing a cash buy-out in this instance.

- (3) *Existing unique, or unusual site constraints including, but not limited to, potential adverse impacts on environmental resources and features on the subject parcel and adjacent parcels, and difficult soil conditions.*

Response: This site is located in an environmentally sensitive area adjacent to Goose Creek for which Loudoun County and Loudoun Water have adopted measures to protect this valuable drinking water source and which also is a state-designated scenic river. More than 67% of the site will remain as open space to provide environmental and scenic protection of this resource. There are slopes on the property that have been taken into account with the site's design as well as significant tree save areas that are being preserved. In recognition of these factors, the applicant has received only a modest increase in density over the by-right zoning, and, therefore, would not have been able to obtain the bonus density that is granted when affordable dwelling units are constructed. Rather, the cash buy-out provision was selected to protect this environmentally sensitive area and to keep the density low. In an area planned for from one to four dwelling units per acre, Belmont Glen Village is approved for a density of 1.37 dwelling units per acre under the December 1, 2003 application.

- (4) *Unusual costs associated with development of the subject property.*

Response: The approved proffers for Belmont Glen Village allocate more of the proffer contributions toward the Route 659 transportation fund to help pay for a badly needed upgrade to this arterial roadway in the vicinity of this property.

- (5) *Overriding public needs, health issues, public safety issues, or public welfare issues which are better served by not providing the maximum number of affordable units otherwise required.*

Response: The Board of Supervisors requested and received extra proffer contributions from the applicant for the Route 659 transportation fund to help pay for a badly needed upgrade to this arterial roadway in the vicinity of this property, which clearly has been identified as a public need and a public safety issue by the Board of Supervisors.

- (6) *In the case of a request for a Concept Development Plan Amendment, consideration shall also be given to whether the amendment would result in a reduction in the previously approved rezoning's impact on public facilities and whether the existing proffer commitments for the previously approved rezoning exceed current adopted capital facility guidelines established in the County's comprehensive plan.*

Response: The proposed amendment retains equivalent density to the approved rezoning and is merely seeking to change the layout of the site, while retaining the equivalent level of proffer commitments. As stated previously, additional funds were allocated to the Route 659 road improvements, which were considered to be critical at the time of the rezoning application. The applicant paid this contribution in 2004 and 2005 in the amount of \$750,000.